

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

TRISHA PRESTON and MICHAEL PRESTON,
Individually and As Parents and Natural Guardians
of AP, an Infant,

Plaintiffs,

ORDER

11-CV-6420L

v.

HILTON CENTRAL SCHOOL DISTRICT, BRIAN
BARTALO, DANA BOSHACK, BRAD HELMER,
TAIT LOE, ANN FREY, ANN MARIE MADCONALD
and EILEEN COWEY,

Defendants.

The plaintiffs' motion to seal all pleadings and records in this action (Dkt. #2) is denied.

The well-established presumption of accessibility to court documents is reflected in Local Rule 5.3(a) which states that "there is a presumption that Court documents are accessible to the public and that a substantial showing is necessary to restrict access." *See also Video Software Dealers Ass'n v. Orion Pictures*, 21 F.3d 24, 26 (2d Cir. 1994) ("[C]ourts have recognized a strong presumption of public access to court records. This preference for public access is rooted in the public's first amendment right to know about the administration of justice") (citing *Nixon v. Warner Communications, Inc.*, 435 U.S. 589 (1978)).

While this presumption of access can be overcome by a number of countervailing interests, such as preserving a defendant's right to a fair trial or a third party's privacy interests, *see, e.g., Stephanski v. Goord*, No. 02-CV-562F, 2005 WL 711628, at *1-*2 (W.D.N.Y. Mar. 29, 2005), the Second Circuit has emphasized that a district court "must carefully and skeptically review sealing requests to insure that there really is an extraordinary circumstance or compelling need" to seal court records. *Orion Pictures*, 21 F.3d at 27.


Although I do recognize that the action involves a minor as the alleged victim, nevertheless, since the victim has been removed from the defendant school district, I believe that there are countervailing reasons why total sealing of the entire file is not warranted. I do not believe plaintiffs have presented sufficient facts to overcome the presumption of openness and public access to judicial proceedings, especially since the defendant is not a private party but is a school district that allegedly allowed employees to engage in impermissible conduct. The public, then, has some interest in having access to such a proceeding concerning the claims alleged and the Court's handling of such a matter.

Plaintiffs may, however, elect to proceed anonymously using pseudonyms or initials to protect the privacy of themselves and the infant plaintiff.

CONCLUSION

Plaintiffs' motion to seal the entire file and records (Dkt. #2) is denied, but plaintiffs are granted leave to proceed anonymously using pseudonyms or initials.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
September 12, 2011.